

## California Nonresidential Building Energy Use Disclosure Program (AB 1103) Frequently Asked Questions (FAQ)

The California Nonresidential Building Energy Use Disclosure Program (Disclosure Regulations) began with the passage of Assembly Bill 1103 (Saldana, Chapter 533) in 2007 to require energy use disclosure prior to the sale, lease, or financing of a whole building. The regulations require use of the U.S. Environmental Protection Agency's (EPA) ENERGY STAR Portfolio Manager (Portfolio Manager) benchmarking tool to document the building benchmarking data to be disclosed in the reports required by the Disclosure Regulations. Portfolio Manager can be accessed at the EPA Portfolio Manager [website](#). Questions concerning the use of Portfolio Manager should be directed to the EPA. Questions concerning the Disclosure Regulations should be sent to the California Energy Commission through the [AB 1103 Disclosure Regulations website](#). Creation of a statewide disclosure program has led to some questions on the specifics of how the Disclosure Regulations will be implemented. Some of the more frequently asked questions are addressed below.

### 1) Am I required to generate a disclosure for my transaction?

If you answer YES to ALL of the following questions, then you must generate a disclosure report. Please see the statute and the regulations, which are available on the [AB 1103 Disclosure Regulations website](#), for more direction on how to comply.

- a. Is the entire nonresidential building being offered for sale or lease or subject to new financing (Section 1683)?
- b. Based on the current date, is the gross square footage of the nonresidential building greater than the following limits (Section 1682)?
  - i. On or after July 1, 2013      50,000 square feet.
  - ii. On or after January 1, 2014      10,000 square feet.
  - iii. On or after July 1, 2014      Equal to or greater than 5,000 square feet.

Note that nonresidential buildings less than 5,000 square feet are not required to comply with these regulations.

- c. Is the nonresidential building one of the following types (Section 1681[i])? The building occupancy permit lists the building occupancy type. These occupancy types are defined in the California Building Code, Title 24, Section 302 (2007).
  - i. Assembly (A)
  - ii. Business (B)
  - iii. Education (E)
  - iv. Institutional – Assisted Living (I-1, R-1)
  - v. Institutional – Nonambulatory (I-2)
  - vi. Mercantile (M)
  - vii. Residential – Transient (R-1) (for example, a hotel)

- viii. Storage (S)
- ix. Utility – Parking Garage (U)

- 2) The Portfolio Manager tool is not operational and I need a disclosure for my transaction, what do I do?

The regulations provide the following:

**Section 1683**

A building owner shall disclose the Disclosure Summary Sheet, Statement of Energy Performance, Data Checklist and the Facility Summary for the building to the prospective buyer or lessee no less than **24- hours prior** the execution of the sales contract or the lease; and to a prospective lender no later than the submittal of the loan application.

If the building owner knows that Portfolio Manager is scheduled to be not operational for a period, the building owner can wait until after that period to generate the required disclosure documentation as long as the owner meets the 24-hour requirement.

**Section 1684(c)(4)**

The Disclosure Summary Sheet, Statement of Energy Performance, Data Checklist and the Facility Summary for the building expire **30-days** after they are generated. This allows the building owner to generate the needed disclosure documents well ahead of the 24-hour limit.

If the building owner knows that Portfolio Manager is scheduled to be not operational for a period, the building owner can generate the needed disclosure documents before the Portfolio Manager goes down and provide those disclosure documents during the 30-day period.

**Section 1684(e)**

If there is information missing from a disclosure, and if the owner has made a reasonable effort to ascertain the missing information, the owner may then use an approximation of the information, provided that the approximation is identified as such, is reasonable, is based on the best information available to the owner, and is not used for the purpose of circumventing or evading this article.

This allows the building owner, in the event that actual energy use data cannot be acquired, to use a reasonable approximation to replace the missing data without delaying the transaction. Additionally, under section 1683(c) a building owner may use other sources to supplement the required disclosures.

- 3) What if the property was vacant for some portion of the previous year?

Portfolio Manager has the ability to evaluate spaces that have been vacant. Please indicate any vacant spaces in Portfolio Manager for the appropriate period.

- 4) What if my building isn't eligible to receive an ENERGY STAR energy performance score?

Your building is subject to the disclosure requirement even if it isn't eligible to receive a score. The process for disclosure is the same regardless of whether you are able to obtain a score.

- 5) Do I need to audit my building to get a score?

No.

- 6) Do I need to have an engineer or architect stamp my Portfolio Manager reports?

No.

- 7) Where can I find more information regarding the use of Portfolio Manager to benchmark my building?

- a. The EPA has put together a starter kit for people to benchmark their buildings. This kit can be found at:

[http://www.energystar.gov/index.cfm?c=evaluate\\_performance.bus\\_portfoliomanager\\_benchmarking](http://www.energystar.gov/index.cfm?c=evaluate_performance.bus_portfoliomanager_benchmarking)

- b. The EPA has a wide variety of training on many Portfolio Manager topics, offered in several formats. Search for the training at:

[http://www.energystar.gov/index.cfm?c=business.bus\\_internet\\_presentations](http://www.energystar.gov/index.cfm?c=business.bus_internet_presentations)

- 8) Can I hire someone to benchmark my building for me?

Yes

- 9) Where can I find someone to hire to benchmark my building?

Portfolio Manager maintains a list of service providers. Neither the Energy Commission nor the EPA makes any endorsement of these providers. The list is located at:

[http://www.energystar.gov/index.cfm?fuseaction=spp\\_activity.showSPPResults](http://www.energystar.gov/index.cfm?fuseaction=spp_activity.showSPPResults)

- 10) Where do I find the link from the Energy Commission so I can submit my compliance report?

This link is available on the [AB 1103 Disclosure Regulations website](#).

- 11) Where can I obtain a copy of the Energy Commission Disclosure Summary Sheet?

This document can be found at

<http://www.energy.ca.gov/2012publications/CEC-400-2012-FS/CEC-400-2012-FS-001.pdf>

- 12) My building uses propane instead of natural gas. Do I have to include my propane consumption?

Yes.

- 13) What is the requirement for disclosure for a building where there has been no energy usage for 12 months, such as a long-vacant building?

For a vacant building which has some energy use (security lighting, minimal air conditioning, and so forth), the energy use MUST be reported, with the spaces indicated as vacant within Portfolio Manager.

- 14) Do I have to give a disclosure to a tenant that is renewing an existing lease if the original lease was executed before this law took effect?

Yes. The regulations make no distinction between a new lease and renewed lease.

- 15) How long is a disclosure valid?

As specified by Section 1684 (c)(4), the Statement of Energy Performance, Data Checklist, and Facility Summary shall expire 30 days after they are generated.

- 16) Is this disclosure going to be made public by the Energy Commission?

No. The Energy Commission has no authority or immediate plans to make these data public.

- 17) Do these regulations apply to buildings leased or owned by government entities?

Yes

- 18) What enforcement action will the Energy Commission take if a building owner does not comply with the AB 1103 Disclosure Regulations?

Legislation provides the Energy Commission with the authority to adopt and implement the nonresidential building disclosure regulations, and directs the Energy Commission to set a schedule for compliance. The authority and the compliance requirements are described in the Disclosure Regulations adopted by the Energy Commission.

The Energy Commission will work with the parties to resolve compliance issues consistent with the Energy Commission's authority set forth in California Code of Regulations, Title 20, Section 20, Section 1230, et seq., and Public Resources Code Sections 25210, 25321, and 25900.